

1 **WO**

2

3

4

5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8

9 Jeremy Lee Koons,

No. CV-23-00873-PHX-MTL (CDB)

10 Plaintiff,

ORDER

11 v.

12 Gwendolyn Smith, et al.,

13 Defendants.

14

15 Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge
16 Camille D. Bibles (Doc. 32) recommending that Plaintiff Jeremy Lee Koons’ Motion to
17 Request Leave to Amend (Doc. 21) be denied. Plaintiff timely filed objections to the R&R.
18 (Doc. 34.) Defendants filed a response. (Doc. 36.) Plaintiff replied. (Doc. 37.)

19 **I.**

20 The R&R recounts the procedural history of this case. (Doc. 32 at 1-4.) Neither party
21 objects to that portion of the R&R, and the Court hereby accepts and adopts it. *United*
22 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

23 **II.**

24 In reviewing an R&R, the Court “may accept, reject, or modify, in whole or in part,
25 the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).
26 “[T]he district judge must review the magistrate judge’s findings and recommendations de
27 novo if objection is made, but not otherwise.” *Reyna-Tapia*, 328 F.3d at 1121 (emphasis in
28 original); see *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (finding that district courts need

1 not conduct “any review at all . . . of any issue that is not the subject of an objection”).

2 III.

3 Plaintiff raises ten objections. Defendants argue that the objections do no more than
 4 “disput[e], generally, the denial of his [m]otion.” (Doc. 36 at 5.) They note that Rule
 5 72(b)(2), Fed. R. Civ. P., requires “specific” objections to the R&R. Thus, “[g]eneral
 6 objections that just assert that the R&R was wrong, but fail to specify the findings or
 7 portions of the R&R where the magistrate judge erred and the basis for those objections
 8 are akin to failing to file an objection and constitute waiver of review by the Court.” (Doc.
 9 36 at 8-9 (cleaned up).) Applying this rule, Defendants argue that the Court need not
 10 address Plaintiff’s objections. (Doc. 36 at 9-10.)

11 Defendants’ argument has merit. None of Plaintiff’s objections identify specific
 12 errors committed in the R&R; instead, they restate conclusory allegations rejected by the
 13 R&R and, at times, introduce new facts absent from the proposed second amended
 14 complaint. Out of an abundance of caution, however, the Court will address each of
 15 Plaintiff’s objections and explain why they are insufficient.

16 Plaintiff’s first objection responds to the R&R’s conclusion that he “fails to
 17 plausibly allege Calvin took an adverse action against him due to protected conduct” in
 18 part because, while “Plaintiff alleges Calvin retaliated against him for filing this suit against
 19 Smith, [he] does not plausibly allege how Calvin knew, prior to October 27, 2023, that
 20 Plaintiff had filed a suit against Smith . . . ” (Doc. 32 at 10-11.) Plaintiff responds that
 21 “Calvin, as well as Barnhart and Defendant Smith plausibly knew of the retaliation suit
 22 against Smith in May 2023.” (Doc. 34 at 1.) He then introduces new allegations, absent
 23 from his second amended complaint, to support that contention. (*See id.* at 1-2.) But he
 24 does not identify any error in the R&R’s analysis, and the Court finds none. (*See id.*)
 25 Therefore, the Court will overrule the objection.

26 His second objection also fails. There, he contests the R&R’s finding that he does
 27 not “plead facts sufficient to establish Calvin took a cognizable adverse action against
 28 [him].” (Doc. 32 at 11.) Plaintiff repeats his conclusory allegations that “[t]he cognizable

1 adverse action was not following established” policy and that Calvin “s[aw] an opportunity
 2 to retaliate . . . against [him] . . . for his filing of a suit against her friend.” (Doc. 34 at 2.)
 3 Plaintiff further repeats that Calvin’s alleged comments regarding a lost email from
 4 Plaintiff’s wife demonstrate that “there was an agreement, or meeting of the mind[s]
 5 between Smith and Calvin.” (*Id.*) These arguments do not identify any specific error in the
 6 R&R’s reasoning, which noted several pleading deficiencies that Plaintiff does not contest.
 7 (*See* Doc. 32 at 11-12.) The Court finds no error. Thus, this objection will also be overruled.

8 Plaintiff’s third objection challenges the R&R’s conclusion that “Plaintiff fails to
 9 plausibly allege that as of November 12, 2023 (one day prior to the date the service order
 10 in this matter issued and six weeks before Smith waived service), Barnhart knew of
 11 this lawsuit, or knew of any report to the ombudsman regarding any conduct by
 12 Barnhart . . .” (Doc. 32 at 13.) Plaintiff states that he “plausibly alleges Barnhart knew
 13 about the lawsuit and the report to the ombudsman for the same reasons Calvin and Smith
 14 knew of the suit.” (Doc. 34 at 3.) He also attests that he can produce sworn declarations
 15 from his mother and stepfather confirming that Barnhart harassed and threatened him. (*Id.*)
 16 These arguments do not identify any error in the R&R’s reasoning (nor does the Court find
 17 any) and, like Plaintiff’s first objection, attempts to introduce new allegations. (*See id.*)
 18 This objection will, therefore, be overruled.

19 Plaintiff’s fourth objection fares no better. He objects to the R&R’s statement that
 20 “[he] fails to allege when or how Barnhart *specifically* threatened to take away his visitation
 21 privileges, or that Barnhart was authorized to do so.” (Doc. 32 at 13 (emphasis in original).)
 22 The R&R also found that certain statements made by Barnhart did not constitute an adverse
 23 action under Ninth Circuit caselaw. (Doc. 32 at 13-14.) Plaintiff responds that he “did
 24 allege when Barnhart specifically threatened to take away his visitation privileges, even
 25 though Barnhart did not state specifically how she would do that.” (Doc. 34 at 3.) He does
 26 not identify any error in the R&R’s analysis or argue that the R&R misapplied the many
 27 cases it cited in support of its conclusion. (*See id.*) The Court finds that the R&R correctly
 28 applied the law. Accordingly, the Court will overrule this objection.

1 Plaintiff's fifth objection responds to the R&R's observation "that Plaintiff, who is
 2 presumably a person of ordinary firmness, was not sufficiently intimidated by Calvin's
 3 alleged comments and actions or failures to act that he hesitated to assert claims regarding
 4 the alleged retaliation." (Doc. 32 at 12.) Plaintiff states that "the question of whether a
 5 particular action would deter a person of ordinary firmness is an objective one and does
 6 not depend on how a particular plaintiff reacts." (Doc. 34 at 4.) The Court takes Plaintiff
 7 to argue that the R&R erred by factoring Plaintiff's continued engagement in First
 8 Amendment activity into its analysis of whether a person of ordinary firmness would have
 9 been deterred from such activity by Calvin's alleged misconduct. Plaintiff provides no
 10 caselaw to support this argument, and the Court finds that it is without merit. (*See id.*) Thus,
 11 this objection will be overruled.

12 Plaintiff's sixth objection challenges the R&R's conclusion that "Plaintiff's claims
 13 against Calvin do not involve the same claims or operative facts on which Plaintiff has
 14 been allowed to proceed in this suit . . ." (Doc. 32 at 12.) In response, Plaintiff contends
 15 that "[t]he claims against Calvin have a relationship agreement or meeting of the minds to
 16 conspire against Plaintiff for (1) reporting Calvin to the ombudsman, and (2) filing a
 17 lawsuit against Defendant Smith." (Doc. 34 at 4-5.) This conclusory statement is not
 18 accompanied by any reasoning, and it does not identify any specific error in the R&R's
 19 analysis. (*See id.*) The Court finds no error. Like the objections before it, this objection will
 20 be overruled.

21 Plaintiff's seventh objection counters the R&R's findings that "[he] does not allege
 22 Barnhart actually curtailed any visitation," that he continued to meet with his mother and
 23 child, and that he "fails to sufficiently allege harm arising from Barnhart's actions." (Doc.
 24 32 at 14.) Plaintiff responds that he is "currently suspended from visitation privileges until
 25 December 2024 based on a false disciplinary ticket." (Doc. 34 at 5.) He contends that "[t]his
 26 is the third fraudulent ticket [he] has received . . . constituting harm arising from Barnhart's
 27 harassment . . ." (*Id.*) These arguments do not point out any error in the R&R's analysis,
 28 and the Court finds none. (*See id.*) Plaintiff's arguments merely advance new allegations.

1 (See *id.*) The objection will, therefore, be overruled.

2 His eighth objection also fails. There, he responds to the R&R's conclusion that his
 3 "allegation that [his] cell was searched and someone put his draft second amended
 4 complaint on his bed is insufficient to show an adverse, retaliatory action." (Doc. 32 at 18.)
 5 The R&R also notes that "[i]t is Plaintiff's burden to demonstrate any alleged adverse
 6 action did not reasonably advance a legitimate correctional goal," and "[p]rison cell
 7 searches can be conducted for any reason or no reason, and there is no argument that they
 8 do not advance legitimate correctional goals of promoting safety and security." (*Id.*)
 9 Plaintiff says that the cell search was pretextual and references new facts absent from the
 10 proposed second amended complaint. (Doc. 34 at 5-7.) His arguments do not specifically
 11 identify any error in the R&R's analysis. (See *id.*) The Court finds that the R&R correctly
 12 applied the law. Thus, the objection will be overruled.

13 Plaintiff's ninth objection challenges the R&R's finding that "[his] bald allegation
 14 that Warden Washburn changed his housing assignment in retaliation . . . is insufficient to
 15 proceed on a [42 U.S.C.] § 1983 action against the Warden." (Doc. 32 at 19.) Plaintiff
 16 argues that the Warden's justifications for changing his housing were pretextual and then
 17 advances new allegations absent from the second amended complaint. (Doc. 34 at 7.) The
 18 Court finds no error in the R&R's analysis. The objection will be overruled.

19 Plaintiff's tenth and final objection responds to the R&R's conclusion that, with
 20 respect to his allegations of a conspiracy, he asserts only "conclusory allegations without
 21 specific facts, which are insufficient to allow a plaintiff to proceed on a claim of
 22 conspiracy." (Doc. 32 at 21.) Plaintiff says only that he "has provided specific detailed
 23 allegations that support[] a c[h]ronology of events that Defendant Smith, Warden
 24 Washburn, Sgt. Calvin, CO III Anozi, CO III Barnhart, and Frink are all involved in a
 25 conspiracy to retaliate . . ." (Doc. 34 at 8.) This argument does nothing to identify any error
 26 in the R&R's analysis. (See *id.*) It merely states that Plaintiff disagrees with it. (See *id.*)
 27 That is insufficient. Additionally, the Court finds no error in the R&R's analysis. Thus, the
 28 objection will be overruled.

1 **IV.**
2

3 Accordingly,

4 **IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge
5 (Doc. 32) is **adopted**, and Plaintiff's objections (Doc. 34) are **overruled**.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Request Leave to Amend
7 (Doc. 21) is **denied**.

8 **IT IS FINALLY ORDERED** that the proposed second amended complaint (Doc.
9 22) shall be **stricken** from the docket.

10 Dated this 15th day of July, 2024.

11 Michael T. Liburdi
12

13 Michael T. Liburdi
14 United States District Judge

15
16
17
18
19
20
21
22
23
24
25
26
27
28